IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.50 OF 1990.

The Union of India, Bombay : Appellants.

versus

Shir Onambile Ramkrishnan

Thankappan Nair : Respondent.

Mr.A.N.Samant for the appellants.

Mr.Moghe i/by Mr.Avinash Shivade for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 21st June 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondent. Respondent was a contractor to whom work of supplying ballast i.e. khadi was given by the appellants. The khadi was to be supplied within three months from the date of agreement dated 24th March 1979. According to the respondent, he was ready and willing to supply the khadi, but the Union of India illegally

terminated his contract. Therefore, he filed the suit for refund of earnest money, balance of bill amount of Rs.9000/-. The defendant/UOI made counter claim, but did not prove. Ultimately the trial Court decreed the suit of the plaintiff partly directing the defendant/appellant to pay Rs.8265/-. Hence this appeal.

2. Mr.Samant for the appellant points out that even though it was obligatory upon the plaintiff to supply the khadi within three months, he was granted extension on eleven occasions. But even though he could not fulfil his obligation and therefore ultimately by notice dated 28th June 1980 the contract had to be terminated. Therefore, according to him, not only once, but repeatedly the plaintiff has committed breach of the agreement and, therefore, he is not entitled for any refund.

. My attention was drawn by Mr.Samant to the judgment wherein the trial Court has blamed the Union of India for not providing to the respondent any stacking place. That was not actually the point in Issue nor that was the case. There was no justification for the

plaintiff to seek extension. But even then the appellant had given him eleven extensions. It is a fact that the plaintiff could not fulfil his obligation.

3. The trial Court also held that as it was the first contract of the plaintiff with the Union of India, he should have been given long rope i.e. sufficient time to complete his part of the contract. In fact from the eleven extensions granted, it is clear that the appellant/union of India has granted sufficient opportunity and time to the plaintiff to fulfil his obligation. Therefore, if in spite of the time granted, the plaintiff could not fulfil his obligation, then the railway was justified in terminating the contract and the get contract executed through some-one-else. The judgment of the trial Court is, therefore, perverse. The findings are wrong. The conclusions are one sided and, therefore, the appeal is required to be allowed. The appeal is allowed. The judgment and decree of is set aside. Suit of the plaintiff/respondent is dismissed with costs of the lower court. No order to costs of this appeal.

[D.G.DESHPANDE]

21/06/2005 JUDGE.